

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

UNITED STATES OF AMERICA)
)
v.)
) **Case No.: 3:06cr141-MEF**
)
CLAUDE JEROME WILSON, II)

DEFENDANT'S MOTION TO CONTINUE SENTENCING
AND RESPONSE TO THE GOVERNMENT'S
NOTICE TO COURT OF WITHDRAWAL OF SENTENCING ENHANCEMENT AND
AGREEMENT OF APPROPRIATE SENTENCE

COMES NOW the Defendant, Claude Jerome Wilson, II, by and through undersigned counsel, Jennifer A. Hart, and moves this Court to continue his sentencing past the presently scheduled date of August 8, 2007. As grounds for granting this Motion, Defendant would show the following:

1. On March 5, 2007, Claude Wilson pled guilty to one count of being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g).
2. Pursuant to the terms of a Rule 11(c)(1)(C) plea agreement, Mr. Wilson retained the right to withdraw his plea if it was determined that his sentence was subject to enhancement under the Armed Career Criminal Act.
3. Following the Change of Plea Hearing, a Presentence Report (“PSR”) was prepared by United States Probation Officer Stan Robinson. Mr. Robinson concluded that Claude Wilson was, in fact, an Armed Career Criminal. Neither party objected to this finding.
4. The PSR also asserted that Mr. Wilson should receive a further sentencing enhancement because he possessed the firearm, “in connection with a crime of violence.”

Specifically, the Probation Officer alleged that Mr. Wilson possessed the firearm in connection with the offense of Aggravated Stalking, in that, Mr. Wilson photographed himself with a firearm and placed the photograph, with the words "I found you" imprinted on the page, in the mailbox of Carol Smith, Mr. Wilson's former girlfriend. Mr. Wilson objected to the enhancement, claiming that he had not placed the photograph in Carol Smith's mailbox.

5. It is undisputed that the photograph of Mr. Wilson was taken by his sister, Lisa Graham.

6. Mr. Wilson was originally scheduled to be sentenced on May 31, 2007.

7. The day before the scheduled sentencing hearing, the Government filed a *Sentencing Memorandum in Support of Probation Officer's PSI Calculations* (Doc. # 38), in which it concurred with the Probation Officer's conclusion that the enhancement applied.

8. In its *Memorandum*, the Government made several allegations which Mr. Wilson disputed and which, he argued, were not supported by any credible evidence. Specifically, the parties were in dispute as to whether the photograph had been placed in Carol Smith's mailbox by Claude Wilson or some other person.

9. Also on the eve of sentencing, in a letter dated May 30, 2007, the Government informed Defense Counsel that Task Force Agent Keith Jordan had dusted the photographs for fingerprints, but that none had been found. While the Government claimed that it had just learned of this information, the information was in the possession of the case agent, was exculpatory and, pursuant to *Brady* and this Court's Standing Order on Criminal Discovery, was required to be produced to the Defense upon arraignment, not the day before sentencing.

10. Due to the untimely nature of the Government's *Memorandum*, and the serious

allegations the Government made, Mr. Wilson requested a continuance of his sentencing hearing.

11. The Court granted the requested continuance and scheduled sentencing for August 8, 2007.

12. Last week, Counsel for the Government advised Defense Counsel via telephone that “based on some new evidence” concerning Lisa Graham, Mr. Wilson’s sister, it was no longer taking the position that the enhancement for possessing a firearm “in connection with a crime of violence” applied. The Government did not elaborate on what this “new evidence” was or make any further disclosures to the Defense.

13. On today’s date, the Government filed a document entitled *Notice to Court of Withdrawal of Sentencing Enhancement and Agreement of Appropriate Sentence* (Doc. # 42) in which the Government withdrew its request for the application of the sentencing enhancement, as it was “no longer appropriate.” (*Id.*) Again, the Government did not say why it had changed its position.

14. The Government also stated that undersigned counsel agreed that Mr. Wilson should receive a sentence of 180 months. (*Id.*)

15. However, on today’s date, Defense Counsel learned that the “new evidence” in this case was likely the fact that Lisa Graham has been arrested and charged with hiring a hitman to murder Lisa Graham’s 20 year-old daughter, Stephanie Shae Graham, who was shot to death on July 6, 2007. At the present time, Lisa Graham and an alleged accomplice are in the Russell County Jail, where they are being held without bond. Ms. Graham is charged with capital murder.

16. As a witness for the Government in the case against Clause Wilson, the arrest of Lisa Graham on capital murder charges should have been disclosed to the Defense immediately upon the

Government receiving such information.

17. This explosive “new evidence” will weigh heavily in Mr. Wilson’s decision of whether or not to withdraw his guilty plea, as permitted by the terms of the plea agreement, or whether to go forward with sentencing under the Armed Career Criminal Act.

18. While the Government is correct that the undersigned counsel agreed that the appropriate sentence in this case would be 180 months, the undersigned made that representation without ever being advised of the evidence against Lisa Graham.

19. In order that counsel may have adequate time to discuss with Mr. Wilson his options in light of this “newly discovered evidence,” Mr. Wilson respectfully requests that his sentencing hearing be continued for at least 30 days.

20. Additionally, Mr. Wilson desires the opportunity to investigate when the Government obtained this information and whether there have been any discovery violations in this case.

WHEREFORE, based upon the foregoing, Claude Wilson respectfully requests that his sentencing hearing be continued.

Dated this 7th day of August, 2007.

Respectfully submitted,

s/Jennifer A. Hart
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CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:
Chris Snyder, AUSA.

Respectfully submitted,

s/Jennifer A. Hart
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